



2100 M Street NW, Ste 170-340 Washington, DC 20037

November 16, 2016

An Open Letter to Members of Congress:

There is growing concern among those of us who have served our country that a law passed by Congress in September, the Justice Against Sponsors of Terrorism Act (JASTA), places U.S. service men and women around the world at risk.

As veterans, we sacrifice much in service to our nation and because of that we are especially sensitive to laws that can increase our vulnerability. We believe that JASTA, while providing Americans with some additional options for civil litigation, places an undue amount of risk for U.S. service members, officials in foreign service, and those who serve in unofficial capacities. That is why, with the elections now behind us, we strongly urge Congress to make the repeal of the JASTA a legislative priority in 2016.

While we certainly support 9/11 families and their right to seek justice, this law is not the correct way to accomplish this. The unintended consequences of JASTA are potentially disastrous. One of the major concerns for veterans is JASTA's impact on the principle of sovereign immunity. This widely-held international principle has protected U.S. officials, diplomats, intelligence offices and members of the military for centuries. It's what has prevented U.S. troops from being punished or imprisoned by a foreign country for actions taken in the line of duty. Without sovereign immunity, we expose service members to hostile foreign powers and their brand of "justice".

The U.S. has a larger international footprint and is more exposed than any other country in the world. If other countries answer JASTA with reciprocal legislation of their own, U.S. personnel, serving abroad will become immediate targets for lawsuits from hostile foreign governments. Chairman of the Joint Chiefs of Staff General Joseph Dunford outlined this concern in his letter to Congress before the veto override vote stating, "Any legislation that risks reciprocal treatment by foreign governments would increase the vulnerability of U.S. Service members to foreign legal action while acting in an official capacity."

In fact, government factions in Iraq, Turkey and even top allies such as France have already advocated JASTA-like legislation in their own countries. It is not difficult to see how families of individuals killed in U.S. drone strikes could bring a case against members of the U.S. military. The intent of JASTA was to seek retribution against terrorists who caused so much pain and suffering here in the U.S. As veterans, we completely understand this desire. For many of us, 9/11 was a call to protect our nation and do our part to bring those responsible to justice.

In Congress' attempt to achieve justice against terrorism, however, it has severely harmed our country's ability to fight it. Now more than ever, the U.S. needs the help of international partners to combat the rise of extremism.

In September, writing in the Wall Street Journal, Ambassador John Bolton and former Attorney General Michael Mukasey warned, "We have far more to lose than other nations from creating

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exceptions to sovereign immunity that others could use against us. There is no shortage of people hostile to America, even in nominally friendly countries, who would welcome Jasta's passage."

JASTA was passed through Congress hastily, without a hearing in the House or Senate. It then became law despite strenuous warnings from the nation's top national security and foreign policy experts. With election season now over, we encourage Congress to make this right. There needs to be a solution that provides justice for and recognizes the victims of 9/11, but does not completely the protections our service members have while serving around the globe.

We urge Congress to repeal JASTA immediately and find a legitimate way to support the families of the victims of 9/11 that rests on facts and does not undermine our ability to project U.S. power overseas or put our service men and women at risk of being hauled before foreign courts. Our national security and the safety of our military, our diplomats and our intelligence officers depend on it.

Sincerely,

Greg Henderson, U.S. Navy

Timothy Stuehmeyer, US Air Force

Diedrich Drafz, U.S. Army

Andrew J. Hopkins, US Air Force National Guard

Edward Richardson, SSG, U.S. Army

Richard Goorey, USMC

John C. Ellingboe, US Navy

Bob Guersch, U.S. Army

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Karen Gearreald on behalf of my deceased father, Lt. Col. Tull N. Gearreald, U.S. Army

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What They're Saying: **JASTA**

JASTA and its effect on U.S. National Security

The Justice Against Sponsors of Terrorism Act (JASTA), vetoed by President Obama but overridden on September 28, 2016 by the U.S. Congress, is now law. This legislation will likely trigger a chain of unintended and harmful consequences and is already leading to foreign lawsuits against the U.S., which could ultimately implicate U.S. personnel serving abroad.

The legislation passed by Congress has received widespread opposition from the country's top defense and national security leaders and our military veterans.

Administration & National Security Leaders:

Defense Secretary Ash Carter | September 26, 2016

"Allowing our partners and allies—not just designated state sponsors of terrorism—to be subject to lawsuits inside the United States will inevitably undermine the trust and cooperation our forces need to accomplish their important missions. By damaging our close and effective cooperation with other countries, this could ultimately have a chilling effect on our own counterterrorism efforts."

Chairman of the Joint Chiefs of Staff General Joseph Dunford | September 28, 2016

"Any legislation that risks reciprocal treatment by foreign governments would increase the vulnerability of U.S. Service members to foreign legal action while acting in an official capacity."

CIA Director John Brennan | September 28, 2016

"I believe JASTA will have grave implications for the national security of the United States. The most damaging consequence would be for those U.S. Government officials who dutifully work overseas on behalf of our country."

Former CIA Director David Petraeus, Chairman of the KKR Global Institute | October 27, 2016

"This law, however, could open the United States up to extraordinary vulnerability in that if this undoes that bedrock principle of international law of sovereign immunity, we will be the ones that most likely will prove to be the most targeted, and the most vulnerable."

Former United States Deputy Secretary of Defense John Hamre, CEO of the Center for Strategic and International Studies | September 22, 2016

"JASTA sounds great to voters who are still angry about 9/11. But it is establishing a dangerous precedent. American politicians feel that our virtue allows us to establish laws that reach across our border to people in other countries. But we are now seeing other governments use our logic, and turning it against our interests—in Russia, in China and even in more friendly states."

Open Letter from the National Security Community | September 20, 2016

"If JASTA is allowed to become law, it will completely undercut sovereign immunity protections upon which the United States and all sovereign nations have relied for centuries, and our troops, our diplomats and all U.S. government personnel working overseas could very well find themselves subject to lawsuits in other countries. This must not happen."

U.S Military Veterans:

Former Senator Larry Pressler (R-South Dakota) | The Hill | September 29, 2016

"As a Vietnam combat veteran, I could almost certainly be sued by the Vietnamese government or by a Vietnamese citizen. The Gulf War, Iraq War and Afghanistan War veterans are more protected by constitutional congressional actions, but we Vietnam veterans will be raw targets if Americans can sue Saudi Arabia."

Col. David Smith (Ret.), U.S. Marine Corps | Orlando Sentinel | November 2, 2016

"Like almost all Americans, I want to see our members of Congress work together to help solve the tough foreign-policy issues that face our nation, but JASTA is not a solution. It is a flawed law with unintended consequences beyond imagination. The Pandora's box that would be opened with this act is the reality of leaving bare all those in uniform serving overseas and the men and women who are charged with gathering the intelligence necessary to prevent future terrorist attacks against the United States. All of our assets become vulnerable by the veil of immunity being lifted, having all the protections of accepted law reversed. This would leave our troops and the intelligence community overly vulnerable to foreign laws and courts. Make no mistake, JASTA will make the world a more dangerous place for America."

J.D. Sparks, 2nd Battalion 8th Marines | Oldham Era | October 27, 2016

"As a Marine Veteran who served in Panama, the Mediterranean and the Middle East, I care deeply about issues affecting our military. I believe strongly that Congress has a responsibility to consider the impact their legislative actions could have on the safety of our military men and women around the world. JASTA takes foreign policy issues away from the United States government and places them in the hands of trial lawyers."

Paul Crespo, Former Officer, U.S. Marine Corps, Former Military Attaché, U.S. Defense Intelligence Agency | Miami Herald | October 27, 2016

"As a former Marine Corps officer, and U.S. military attaché posted to U.S. embassies in hotspots worldwide, I can attest to the protection [sovereign immunity] provides our military, diplomats and intelligence operatives in places like the Middle East, the Balkans, Latin America, Asia, and even Europe. Without sovereign immunity, countries with questionable legal systems such as Russia, China, Pakistan or Venezuela, could prosecute our soldiers, diplomats and spies, or allow their citizens to file unwarranted lawsuits against them, or the U.S. government, in their local courts. Their claims would not need to have merit. Following the passage of JASTA, an Iraqi group has already taken legal steps to do just that. Others are expected to quickly follow suit."

Angela Sinkovits, Attorney and Former Medical Specialist in the U.S. Army | Denver Post | October 5, 2016

"I am a U.S. Army veteran, a member of the Colorado Bar, and a resident of Lakewood, and I am concerned about the potential negative effects of the Justice Against Sponsors of Terrorism Act. JASTA could undermine our ability to defend our interests anywhere in the world, and perhaps even make the U.S. more vulnerable to terrorism."

Air Force Major General (Ret.) William Russell Cotney | Nashville Tennessean | November 4, 2016

"JASTA will undermine our ability to defend our interests around the world. In their quest for justice against terrorism, Congress may be making the United States and our military and government officials more vulnerable than they are today. JASTA would gut sovereign immunity. It is a move that will have grave consequences, especially for our diplomats and military all across the world by encouraging other countries to bring Americans before foreign courts for carrying out their official duties and even make the U.S. government responsible for acts of private citizens."

Open Letter from the Military Community | September 22, 2016

"The unintended consequences of this legislation could bring about a chain reaction around the world, giving other countries license to target the U.S. military and enable foreign courts to bring suits against American servicemen and women for actions taken in the line of duty."

Open Letter from Military Veterans to Congress | November 15, 2016

"One of the major concerns for veterans is JASTA's impact on the principle of sovereign immunity. This widely-held international principle has protected U.S. officials, diplomats, intelligence offices and members of the military for centuries. It's what has prevented U.S. troops from being punished or imprisoned by a foreign country for actions taken in the line of duty. Without sovereign immunity, international law becomes the law of the jungle."

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September 14, 2016

The Honorable
United States House of Representatives
Rayburn House Office Building
Washington, DC 20515

Dear :

I am writing to follow up on our previous discussion about Timor-Leste (the former East Timor) and to see if you are available to meet with Timor-Leste Prime Minister Rui Maria de Araujo and Minister (and former President and Prime Minister) Kay Rala Xanana Gusmao when they are in Washington on Wednesday, September 21st.

As we discussed, the story of Timor-Leste's independence struggle provides a salutary example to other new states making the transition from conflict to independence – and for how the international community can support those efforts effectively. Now, Timor-Leste is embarked on the transition from fragility to stability and sustainability. It is fortunate to have significant hydrocarbon and mineral resources that provide near-term revenues, but it seeks to diversify its economy and prepare for the time when those assets are depleted. To that end, Timor-Leste has created a sovereign wealth fund modeled after the Norwegian petroleum fund to manage its resources transparently and sustainably, and it has prepared a widely-heralded twenty-year development plan to diversify and ensure the sustainability of its economy.

Key to Timor-Leste's success in these ambitious plans is resolving its maritime boundaries with its neighbors, Indonesia and Australia. These issues are outlined in a policy paper and strategic development plan prepared by the Government of Timor-Leste, which are available through the following links: (1) policy paper – <http://www.gfm.tl/wp-content/uploads/2016/08/English-10MB-POSITION-PAPER-FINAL-WITH-BORDER.pdf>; (2) strategic development plan – (<http://timor-leste.gov.tl/wp-content/uploads/2011/07/Timor-Leste-Strategic-Plan-2011-20301.pdf>).

We will follow up with your office about a possible meeting, but in the meantime, please feel free to contact me (mac.bernstein@dlapiper.com; (202) 799-4302) or my colleague Jessica Woolley (jessica.woolley@dlapiper.com; (202) 799-4359) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mac Bernstein', written over a horizontal line.

Matthew C. Bernstein

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